



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1658/P1

TJD:.....

In: 1/23/09

gs

DOA:.....Jablonsky, BB0236 - Oversight of care management organizations
by Office of the Commissioner of Insurance

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

DN

Do NOT Gen

1 AN ACT ~~relating to~~; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

This is a preliminary draft. An analysis will be provided in a subsequent draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 20.145 (1) ^(gh) ~~(g) 3.~~ of the statutes is created to read:

3 20.145 (1) ^(gh) ~~(g) 3.~~ All moneys received under s. 648.27 for expenses related to
4 administering oversight of care management organizations under ch. 648 and for
5 transferring to the appropriation account under s. 20.435 (4) (kv) the amount
6 allocated by the commissioner. ^{of insurance}

7 SECTION 2. 20.435 (4) (jt) of the statutes is created to read:

note: bud

20.435 (4) (jt) *Care management organization; insolvency assistance.* All moneys received as assessments under s. 648.75 (3) for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees of an insolvent or financially hazardous care management organization.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

*****NOTE: Should this and the next appropriation actually be under s. 20.435 (7)?

SECTION 3. 20.435 (4) (kv) of the statutes is created to read:

20.435 (4) (kv) *Care management organization; oversight.* All moneys transferred from the appropriation account under s. 20.145 (1) (g) 3, for expenses related to financial certification, monitoring, and assessment of care management organizations that are subject to ch. 648.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 4. 46.284 (3m) of the statutes is created to read:

46.284 (3m) A care management organization that is described under 600.01
b) 10. a., to which s. 600.01 (1) (b) 10. b. does not apply and that is certified under
(3) shall apply for a permit with the office of the commissioner of insurance
under ch. 648.

SECTION 5. 600.03 (34) of the statutes is amended to read:

600.03 (34) "Office" means ~~"the office of the insurance commissioner"~~
commissioner of insurance of this state.

History: 1971 c. 260; 1973 c. 22; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 223, 371, 374, 375, 421; 1977 c. 339; 1979 c. 89 ss. 383, 543; 1979 c. 102 ss. 49 to 53, 236 (2002); 1979 c. 177; 1981 c. 38, 82; 1983 a. 120, 189, 274, 358; 1985 a. 29; 1987 a. 167, 247; 1989 a. 23, 31; 1989 a. 187 s. 29; 1993 a. 201; 1995 a. 225; 1999 a. 30; 2001 a. 65; 2003 a. 261; 2007 a. 170.

SECTION 6. Chapter 648 of the statutes is created to read:

CHAPTER 648

REGULATION OF CARE

MANAGEMENT ORGANIZATIONS

648.01 Definitions. In this chapter:

(1) "Care management organization" means an entity described in s. 46.284 (3m). ✓

(2) "Department" means the department of health services. ✓

(3) "Enrollee" has the meaning given in s. 46.2805 (3). ✓

(4) "Permittee" means a care management organization issued a permit under this chapter. ✓

648.03 Applicability of other laws. Notwithstanding s. 600.01 (1) (b) 10. a., ss. 600.01, 600.02, 600.03, and 600.12 apply to this chapter.

648.05 Permit. (1) ^BPERMIT REQUIRED. After December 31, 2009, no care management organization may provide services to its enrollees without a permit under this chapter. Following

(2) ^BAPPLICATION. A care management organization applying for a permit shall submit all of the information ^{required by the commissioner} required by the commissioner, in the ^{required format} required format. ^{required by the commissioner}

including all of the following:

(a) ^{principal} The names, addresses and occupations of all controlling persons and ^{of the care management organization} directors and ^{principle} officers currently and for the preceding 10 years, unless the commissioner waives this requirement.

(b) Business organization documents, including articles and bylaws if applicable.

(c) A business plan approved by the department, including a projection of the anticipated operating results at the end of each of the next 3 years of operation, based on reasonable estimates of income and operating expenses.

(d) Any other relevant documents or information that the commissioner reasonably requires after consulting with the department.

(3) STANDARDS FOR ISSUING PERMIT. The commissioner may issue a permit to the care management organization if the commissioner finds, after consulting with the department, all of the following:

(a) All requirements of law have been met.

(b) All the directors and principal officers or any controlling person are trustworthy and competent and collectively have the competence and experience to engage in the proposed services.

(c) The business plan is consistent with the interests of the care management organization's enrollees and the public.

****NOTE: I have omitted from this section the last requirement that the care management organizations be certified by and contract with the department as this requirement is already set forth in the definition of care management organization.

(4) SUSPENSION OR REVOCATION. The commissioner may suspend or revoke a permit issued under this chapter if the commissioner finds, after consulting with the department, any of the following:

(a) The permittee violated a law or rule, including a rule ^{establishing} setting financial standards. _{for the financial condition of care management organizations}

(b) The permittee is in a financially hazardous condition.

(c) The permittee is controlled or managed by persons who are incompetent or untrustworthy.

(d) The permittee conceals records from the commissioner.

(e) The permittee's business plan is not in the public interest or is not prudent.

(f) The permittee ceases to be certified by or maintain a contract with the department.

648.10 Powers and duties of the commissioner. The commissioner may do any of the following:

1 (1) Promulgate rules that are necessary to carry out the intent of this chapter,
2 including, after consulting with the department, standards for the financial
3 condition of care management organizations.

4 (2) Use the authority granted under ss. 601.41, 601.42, 601.43, 601.44, 601.61,
5 601.62, 601.63, and 601.64, including ^{the authority to} issuing orders, to enforce this chapter and to
6 ensure that a care management organization has sufficient financial resources.

***NOTE: I have added s. 601.61 to this list. Is that okay?

7 **648.15 Reports and replies.** (1) REPORTS. The commissioner may require
8 from any care management organization any of the following:

9 (a) Statements, reports, answers to questionnaires, and other information in
10 whatever reasonable form the commissioner designates and at such reasonable
11 intervals as the commissioner chooses, or from time to time.

12 (b) Full explanation of the programming of any data storage or communication
13 system in use.

14 (c) Information from any books, records, electronic data processing systems,
15 computers, or any other information storage system at any reasonable time in any
16 reasonable manner.

17 (d) Statements, reports, audits, or certification from a certified public
18 accountant or an actuary approved by the commissioner.

19 ✓ (2) FORMS. The commissioner may prescribe forms for the reports under sub.
20 (1) and specify who shall execute or certify such reports.

21 (3) ACCOUNTING METHODS. The commissioner may prescribe reasonable
22 minimum standards and techniques of accounting and data handling to ensure that
23 timely and reliable information will exist and will be available to the commissioner.

1 (4) REPLIES. Any officer or manager of a care management organization, any
2 person controlling or having a contract under which the person has a right to control
3 a care management organization, whether exclusively or otherwise, or any person
4 with executive authority over or in charge of any segment of such a care management
5 organization's affairs, shall reply promptly in writing or in another designated form,
6 to any written inquiry from the commissioner requesting a reply.

7 (5) VERIFICATION. The commissioner may require that any communication
8 made to the commissioner under this section be verified.

9 (6) IMMUNITY. In the absence of actual malice, no person shall be subject to
10 damages in an action for defamation based on a communication to the commissioner
11 required by law under this chapter or by the commissioner under this chapter.

12 (7) EXPERTS. The commissioner may employ experts to assist the commissioner
13 in an examination or in the review of any transaction subject to approval under this
14 chapter. The care management organization that is the subject of the examination,
15 or that is a party to a transaction under review, including the person acquiring,
16 controlling, or attempting to acquire the care management organization, shall pay
17 the reasonable costs incurred by the commissioner for the expert and related
18 expenses.

19 **648.20 Examinations. (1) POWER TO EXAMINE.** (a) To inform himself or herself
20 about a matter related to the enforcement of this chapter, the commissioner may
21 examine the affairs and condition of any permittee.

22 (b) So far as reasonably necessary for an examination under par. (a), the
23 commissioner may examine the accounts, records, or documents so far as they relate
24 to the permittee, of any of the following:

1 1. An officer, manager, employee, or person who has executive authority over
2 or is in charge of any segment of the permittee's affairs.

3 2. A person controlling or having a contract under which the person has the
4 right to control the permittee whether exclusively or with others.

5 3. A person who is under the control of the permittee, or a person who is under
6 the control of a person who controls or has a right to control the permittee whether
7 exclusively or with others.

8 (c) On demand, every permittee shall make available to the commissioner for
9 examination any of its own accounts, records, documents, or evidences of
10 transactions.

11 (d) On order of the commissioner, any examinee under this chapter shall bring
12 to the office for examination such records as the order reasonably requires.

13 (2) DUTY TO EXAMINE. The commissioner shall examine every permittee at least
14 once every 3 years.

15 (3) AUDITS OR ACTUARIAL OR OTHER EVALUATIONS. In lieu of all or part of an
16 examination under subs. (1) and (2), or in addition to it, the commissioner may order
17 an independent audit by certified public accountants or an actuarial or other
18 evaluation by actuaries or other experts approved by the commissioner of any
19 permittee. Any accountant, actuary, or other expert selected is subject to rules
20 respecting conflicts of interest promulgated by the commissioner. Any audit or
21 evaluation under this section is subject to s. 648.25, so far as appropriate. *applicable*

22 (4) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination under
23 this section, the commissioner may accept the report of an audit already made by
24 certified public accountants or of an actuarial or other evaluation already made by
25 actuaries or other experts approved by the commissioner, or the report of an

1 examination made by another government agency in this state, the federal
2 government, or another state.

3 (5) PURPOSE AND SCOPE OF EXAMINATION. An examination may but need not cover
4 comprehensively all aspects of the permittee's affairs and condition. The
5 commissioner shall determine the exact nature and scope of each examination, and
6 in doing so shall take into account all relevant factors, including the length of time
7 the permittee has been doing business, the length of time the permittee has been
8 certified by the department, the nature of the business being examined, the nature
9 of the accounting records available, and the nature of examinations performed
10 elsewhere.

11 **648.25 Conducting examinations.** (1) ORDER OF EXAMINATION. For each
12 examination under s. 648.20, the commissioner shall issue an order stating the scope
13 of the examination and designating the examiner in charge. Upon demand, a copy
14 of the order shall be provided to the examinee.

15 (2) ACCESS TO EXAMINEE. Any examiner authorized by the commissioner shall,
16 for the purposes of the examination, have access at all reasonable hours to the
17 premises and to any property of the examinee.

18 (3) COOPERATION. The officers, employees, and agents of the examinee shall
19 comply with every reasonable request of the examiners for assistance in any matter
20 relating to the examination. No person may obstruct or interfere with the
21 examination in any way other than by legal process.

22 (4) CORRECTION OF BOOKS. If the commissioner finds the accounts or records to
23 be inadequate for proper examination of the condition and affairs of the permittee
24 or improperly kept or posted, the commissioner may employ experts to rewrite, post,
25 or balance them at the expense of the permittee.

1 (5) REPORT ON EXAMINATION. The examiner in charge of an examination shall
2 make a proposed report of the examination, including information and analysis
3 ordered in sub. (1), together with the examiner's recommendations. Preparation of
4 the proposed report may include conferences with the examinee or the examinee's
5 representatives at the option of the examiner in charge.

6 (6) COPIES FOR BOARD. The permittee shall furnish copies of the adopted or
7 finalized report to each member of its board or governing body.

8 (7) COPIES FOR OTHER PERSONS. The commissioner may furnish, without cost or
9 at a price to be determined by the commissioner, a copy of the adopted report to the
10 insurance commissioner of each state in the United States and of each foreign
11 jurisdiction in which the examinee is authorized to do business, and to any other
12 interested person in this state or elsewhere.

13 (8) REPORT AS EVIDENCE. In any proceeding by or against the permittee or any
14 officer or agent of the permittee the examination report as adopted by the
15 commissioner shall be admissible as evidence of the facts stated in the report. In any
16 proceeding commenced under ch. 648, the examination report whether adopted by
17 the commissioner or not shall be admissible as evidence of the facts stated in the
18 report. In any proceeding by or against the examinee, the facts asserted in any report
19 properly admitted in evidence shall be presumed to be true in the absence of contrary
20 evidence.

21 **648.27 Costs of examination.** (1) COSTS TO BE PAID BY CARE MANAGEMENT
22 ORGANIZATIONS. Permittees shall pay the reasonable estimate of costs of
23 examinations under ss. 648.20 and 648.25 of review of applications, and financial
24 monitoring and analysis of care management organizations by the commissioner and
under s. 648.05 of
under s. 648.15 or 648.20

1 the department, including overhead and fixed costs, by a system of regular annual
2 billings.

3 (2) DETERMINATION OF COSTS. Annually, the commissioner shall determine the
4 estimated costs under sub. (1) for the commissioner and the department. The
5 commissioner shall serve a request for payment on each permittee allocating the cost
6 to each permittee in an amount that the commissioner determines reflects the
7 permittee's proportionate share of projected enrollment in the department's annual
8 contracting period.

9 (3) PAYMENT DEADLINE. The permittee shall pay the amount determined by the
10 commissioner within 30 days of service of the request for payment under sub. (2).

11 **648.30 Nondisclosure of information. (1) TYPES OF INFORMATION.** The office
12 may refuse to disclose and may prevent any other person from disclosing any of the
13 following:

14 (a) Testimony, reports, records, and information that are obtained, produced,
15 or created in the course of an inquiry under s. 648.15.

16 (b) Testimony, reports, records, and information that are obtained, produced,
17 or created in the course of an examination under s. 648.20.

18 (c) Testimony, reports, records, communications, and information that are
19 obtained by the office from, or provided by the office to, any of the following, under
20 a pledge of confidentiality or for the purpose of assisting or participating in
21 monitoring activities or in the conduct of any inquiry, investigation, or examination:

22 1. The National Association of Insurance Commissioners.

23 2. An agent or employee of the National Association of Insurance
24 Commissioners.

25 3. The insurance commissioner of another state.

1 4. An agent or employee of the insurance commissioner of another state.

2 5. An international, federal, state, or local regulatory or law enforcement
3 agency, including the department.

4 6. An agent or employee of an agency described in subd. 5.

5 **(2) WAIVER AND APPLICABILITY OF THE PRIVILEGE.** Section 601.465 (2m) (a) to (d)
6 applies to the privilege under sub. (1).

7 **648.35 Enforcement procedure. (1) INJUNCTIONS AND RESTRAINING ORDERS.**
8 The commissioner may commence an action in circuit court in the name of the state
9 to restrain by temporary or permanent injunction or by temporary restraining order
10 any violation of this chapter, any rule promulgated under this chapter, or any order
11 issued under s. 648.10 (2). The commissioner need not show irreparable harm or lack
12 of an adequate remedy at law in an action commenced under this subsection.

13 **(2) ORDERS.** The commissioner shall issue any orders under the procedures
14 described in s. 601.63 and shall hold any hearings under the procedures described
15 in s. 601.62. ✓

16 **(3) COMPULSIVE FORFEITURES.** If a person does not comply with an order issued
17 under s. 648.10 (2) within 2 weeks after the commissioner has given the care
18 management organization notice of the commissioner's intention to proceed under
19 this subsection, the commissioner may commence an action for a forfeiture in such
20 sum as the court considers just, but not exceeding \$5,000 for each day that the
21 violation continues after the commencement of the action until judgment is
22 rendered. No forfeiture may be imposed under this subsection if at the time the
23 action was commenced the care management organization was in compliance with
24 the order, nor for any violation of an order occurring while any proceeding for judicial
25 review of the order was pending, unless the court in which the proceeding was

1 pending certifies that the claim of invalidity or nonapplicability of the order was
2 frivolous or a sham. If after judgment is rendered the care management organization
3 does not comply with the order, the commissioner may commence a new action for
4 a forfeiture and may continue commencing actions until the person complies. The
5 proceeds of all actions under this subsection, after deduction of the expenses of
6 collection, shall be paid into the common school fund of the state.

7 ⁴
(3) FORFEITURES AND CIVIL PENALTIES. (a) *Restitutionary forfeiture*. Whoever
8 violates an effective order issued under s. 648.10 (2), any section of this chapter, or
9 any rule relating to this chapter shall forfeit to the state twice the amount of any
10 profit gained from the violation, in addition to any other forfeiture or penalty
11 imposed. *that is effective under s. 601.63*

12 (b) *Forfeiture for violation of order*. Whoever violates an order issued under s.
13 648.10 (2) *that is effective under s. 601.63* shall forfeit to the state not more than
14 \$1,000 for each violation. Each day that the violation continues is a separate offense.

15 (c) *Forfeiture for violation of statute or rule*. Whoever violates, intentionally
16 aids in violating, or knowingly permits a person over whom he or she has authority
17 to violate a section of this chapter or a rule promulgated to administer this chapter *under*
18 shall forfeit to the state not more than \$1,000 for each violation. If the section or rule
19 violated imposes a duty to make a report to the commissioner, each week of delay in
20 complying with the duty is a new violation.

21 (d) *Procedure*. The commissioner may order any person to pay a forfeiture
22 imposed under this subsection, which shall be paid into the common school fund. If
23 the order is issued without a hearing, the affected person may demand a hearing
24 through procedures described under s. 601.62 (3) (a). If the person fails to request
25 a hearing, the order is conclusive as to the person's liability. The scope of review for

1 forfeitures ordered is that specified under s. 227.57. The commissioner may cause
2 an action to be commenced to recover the forfeiture. Before an action is commenced,
3 the commissioner may compromise the forfeiture.

4 ⁵ (4) CRIMINAL PENALTY. Whoever intentionally violates or intentionally permits
5 any person over whom he or she has authority to violate or intentionally aids any
6 person in violating any section of this chapter, any rule promulgated to administer
7 this chapter, or any effective order issued under s. 648.10 (2) is guilty of a Class I
8 felony, unless a specific penalty is provided elsewhere in the statutes. Intent has the
9 meaning expressed under s. 939.23.

that is effective
under s. 601.63

10 **648.45 Affiliates of permittee.** (1) INFORMATION. An permittee and a person
11 attempting to acquire or having control of a permittee, shall report to the
12 commissioner the information concerning the permittee, its affiliates and the person
13 attempting to acquire control of the permittee that the commissioner requires by
14 rule. The commissioner may promulgate rules prescribing the timing of reports
15 under this subsection, including requiring periodic reporting and the form and
16 procedure for filing reports.

17 (2) REPORT FOR AFFILIATES. The permittee may report on behalf of all affiliated
18 entities if it provides all the information that would be required if each insurer
19 reported separately.

affiliate

20 (3) CONSENT TO JURISDICTION. Every permittee shall promptly submit to the
21 commissioner a statement from each of its affiliates that the affiliate agrees to be
22 subject to the jurisdiction of the commissioner and the courts of this state for the
23 purposes of this chapter. A governmental unit is not subject to this requirement. The
24 commissioner may exempt other affiliates from this subsection.

1 (4) INFORMATION ORDER. The commissioner may, by order, require any permittee
2 or any person attempting to acquire or having control of the permittee, to report
3 information under sub. (1) or other information to the commissioner.

4 (5) TRANSACTIONS WITH AFFILIATES. Neither a permittee nor an affiliate of the
5 permittee may enter into a transaction between the permittee and affiliate unless
6 all of the following apply:

7 (a) The transaction at the time it is entered into is reasonable and fair to the
8 interests of the permittee.

9 (b) The books, accounts, and records of each party to the transaction are kept
10 in a manner that clearly and accurately discloses the nature and details of the
11 transaction and, in accordance with generally accepted accounting principles,
12 permits ascertainment of charges relating to the transaction.

13 (c) The permittee's financial condition following any dividends or distributions
14 to shareholders or a person having control of the permittee is reasonable in relation
15 to the permittee's outstanding liabilities and is adequate to its financial needs.

16 (d) The transaction complies with any other standard that the commissioner,
17 after consulting with the department, prescribes by rule.

18 (6) TRANSACTIONS SUBJECT TO DISCLOSURE. (a) *Affiliated transactions to be*
19 *reported.* 1. The commissioner, after consulting with the department, may
20 promulgate rules requiring a permittee, a person attempting to acquire or having
21 control of a permittee, and affiliates of a permittee to report a transaction or a group
22 or series of transactions, if all of the following are satisfied:

23 a. The transaction is between a permittee and a person attempting to acquire
24 or having control of the permittee or an affiliate of the permittee, or the transaction
25 directly or indirectly benefits the person or affiliate.

1 b. The transaction is, or the group or series of transactions are, material to the
2 permittee.

3 2. Transactions that are material to a permittee for the purposes of subd. 1.
4 include management contracts, service contracts, and cost-sharing arrangements.
5 The commissioner, after consulting with the department, may prescribe by rule
6 standards for determining whether a transaction is material under this subsection.

7 3. No permittee, person attempting to acquire or having control of a permittee,
8 or affiliate of the permittee may enter into a transaction required to be reported to
9 the commissioner under this subsection unless the permittee, person, and affiliate
10 report the transaction to the commissioner in the form and by the date before the
11 effective date of the transaction that are prescribed by the commissioner by rule,
12 after consulting with the department. The commissioner may not require the
13 transaction to be reported earlier than 30 days before the effective date of the
14 transaction.

15 (b) *Disapproval*. The commissioner may, within the period prescribed in par.
16 (a) 3., disapprove any transaction reported under par. (a) if the commissioner finds,
17 after consulting with the department, that it would violate the law or would be
18 contrary to the interests of enrollees of the permittee, the department, or the public.

19 (c) *Transactions prohibited*. No permittee, person attempting to acquire or
20 having control of the permittee, or affiliate of the permittee may enter into a
21 transaction that is not reported as required under par. (a) or that is disapproved by
22 the commissioner under par. (b).

23 (d) *Voidable transactions*. If a permittee, person attempting to acquire or
24 having control of the permittee, or affiliate enters into a transaction in violation of
25 this section, the permittee may void the transaction, obtain an injunction, and

1 recover from the person or affiliate the amount necessary to restore the permittee to
2 its condition had the transaction not occurred. The commissioner may order a
3 permittee to void the transaction, to commence an action against the person, or
4 affiliate or to take other action.

5 (e) *Required financial conditions.* The commissioner, after consulting with the
6 department, may promulgate rules for determining adequacy of financial condition
7 under this section.

8 (f) *Exemption if permittee reports.* Paragraph (a) does not apply to a person
9 attempting to acquire or having control of, or an affiliate of, a permittee, if the
10 permittee reports on behalf of the person or on behalf of the affiliate, and the
11 transaction is not disapproved by the commissioner under par. (b).

12 (7) **DIVIDENDS AND DISTRIBUTIONS.** (a) A permittee may not pay a dividend or
13 distribution, and an affiliate of a permittee may not accept a dividend or distribution,
14 unless the permittee reports the dividend or distribution to the commissioner at least
15 30 days before payment and the commissioner does not disapprove the dividend or
16 distribution within that period.

17 (b) The commissioner, after consulting with the department, may promulgate
18 rules under this section that do any of the following:

19 1. Prescribe the form and content of and procedure for filing reports under this
20 subsection.

21 2. Exempt dividends or distributions from the reporting requirement under
22 par. (a) under conditions that the commissioner determines will not jeopardize the
23 financial condition of the permittee.

****NOTE: I do not understand the intent of paragraphs (c) and (d) of your draft language. Please advise as to what these paragraphs add that is different from what is required by sub. (7) already.

1 (8) DUTIES OF OFFICERS AND DIRECTORS. (a) No director or officer of a permittee
2 or of an affiliate of a permittee may permit, participate in, or assent to a transaction
3 or payment or acceptance of a dividend or distribution prohibited under this chapter.

4 (b) An officer or director of a permittee or of an affiliate of a permittee who
5 knows, or reasonably should know, that the permittee or affiliate has entered into
6 a transaction or paid a dividend or distribution that violates this chapter shall report
7 the transaction, dividend, or distribution to the commissioner in writing within 30
8 days after attaining that knowledge. Section 648.15 (6) applies to a report under this
9 section, and the report is confidential unless the commissioner finds it necessary to
10 disclose the report for the purpose of enforcing this chapter.

11 **648.50. Management changes.** (1) APPROVAL REQUIRED. No proposed plan
12 of merger or other plan for acquisition of control of a permittee may be executed
13 unless the commissioner, after consulting with the department, approves the plan.

14 (2) GROUNDS FOR APPROVAL. The commissioner shall approve the plan under this
15 section if the commissioner finds, after a hearing, that it would not violate the law
16 or be contrary to the interests of the public, the department, or the enrollees.

17 (3) INFORMATION REQUIRED. A permittee shall report to the commissioner any
18 changes in directors or principal officers after a permit is issued, together with
19 biographical data on the new director or officer that the commissioner requires by
20 rule.

****NOTE: I included sub. (3) because it had been requested in the original request
and none of the new suggested language seemed to cover this issue. Is that okay?

21 **648.55. Commissioner's summary orders.** (1) The commissioner, after
22 consulting with the department, may make and serve an order on a permittee,
23 requiring it to stop providing services under the department contract, or to take

1 corrective measures, without notice and before hearing, if it appears to the
2 commissioner that irreparable harm to the property or business of the permittee or
3 to the interests of its enrollees or the public, will occur unless the commissioner acts
4 with immediate effect and one of the following applies: a rule establishing

5 (a) The permittee is not in compliance with ~~financial~~ standards. for the financial condition of care management organizations

6 (b) Grounds exist to suspend or revoke the permittee's permit.

7 (2) An order issued under this subsection is effective immediately.

8 (3) The permittee has the rights provided under s. 601.62. The commissioner
9 may serve upon the permittee notice of hearing under the procedures under s. 601.62
10 simultaneously with service of the order under sub. (1).

11 (4) The commissioner may keep proceedings under this section confidential.

12 **648.65 Enrollee immunity. (1) IMMUNITY.** An enrollee of a care management
13 organization is not liable for health care, service, equipment, or supply charges that
14 are covered under the care management organization's contract with the
15 department.

16 (2) PROHIBITED RECOVERY ATTEMPTS. No person may bill, charge, collect a deposit
17 from, seek compensation from, file or threaten to file with a credit reporting agency
18 with respect to, or have any recourse against an enrollee or any person acting on the
19 enrollee's behalf, for any health care, service, equipment, or supply charges for which
20 the enrollee or person acting on his or her behalf is not liable under sub. (1).

21 (3) IMMUNITY NOT AFFECTED. The immunity of an enrollee under subs. (1) and
22 (2) is not affected by any of the following:

23 (a) A breach or default on an agreement by the care management organization
24 or the failure of any person to compensate the provider.

1 (b) The insolvency of the care management organization or any person
2 contracting with the care management organization or the commencement or the
3 existence of conditions permitting the commencement of insolvency, delinquency, or
4 bankruptcy proceedings involving the care management organization or other
5 person, regardless of whether the care management organization or other person has
6 agreed to compensate, directly or indirectly, the provider for health care, services,
7 equipment, or supplies for which the enrollee is not liable under sub. (1)

8 (c) The inability of the provider or other person who is owed compensation for
9 health care, services, equipment, or supplies to obtain compensation from the care
10 management organization.

***NOTE: Do you want this section to apply to enrollees of all care management organizations or only of those required to have a permit under chapter 648? If the section applies to all enrollees, I wonder if this section should be added to ch. 46.

11 **648.75 Insolvency funding. (1) DEPOSIT REQUIRED.** A permittee shall deposit
12 an amount established by the contract with the department, and not less than
13 \$250,000, using the procedures under s. 601.13.

14 (2) RELEASE OF DEPOSIT. A deposit under this section may be released only with
15 the approval of the commissioner by the procedures under s. 601.13 (10) and only in
16 one of the following circumstances:

17 (a) To pay an assessment under sub. (3).

18 (b) To pay creditors of the permittee according to the priority determined by the
19 department if the permittee is insolvent, dissolves, or is subject to an insolvency
20 proceeding, including a bankruptcy proceeding.

21 (3) ASSESSMENT. The department may assess an amount from each permittee's
22 deposit for the purpose of funding arrangements for, or to pay expenses related to,
23 services for enrollees of an insolvent or financially hazardous permittee. The

1 department's assessment shall be allocated to each permittee's deposit in an amount
2 that reflects the permittee's proportionate share of projected enrollment in the
3 department's annual contracting period. The commissioner may authorize release,
4 and the department of administration shall pay to the department the assessed
5 amount for the purposes of this subsection.

6 (4) RECOVERY. The department may recover, and may file a claim or bring civil
7 action to recover, from the insolvent or financially hazardous permittee any amount
8 that the department assesses and pays under sub. (3). Any amount recovered shall
9 be restored to the permittee's deposit in the same proportion as the assessment.

10 (5) RESTORATION. A permittee shall restore its deposit that is subject to an
11 assessment under sub. (3) within 30 days after the assessment, unless the office,
12 after consulting with the department, authorizes a longer period, which shall not
13 exceed 2 years.

****NOTE: Please clarify the intent of this section. It seems that every permittee
is assessed from their deposit to pay for one permittee's insolvency. Then the
non-insolvent permittees must replace the amount of the deposit that was used to pay
for services to enrollees of the insolvent permittee. The amount paid for services to the
insolvent permittee's enrollees is also recovered from the insolvent permittee. Is that
correct?

(END)

D-N

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1658/P1dn

TJD:.....

gjs

To Sue Jablonsky:

Please review this preliminary draft to make sure it complies with your intent. Please note that the previous draft on this topic was LRB-0889, but the changes were so significant I started a new draft. You may want to have Tom Lawless of DHS and Fred Nepple of OCI review the draft because I have organized the draft in a different way. I organized the draft in this manner to make it clearer which sections apply to care management organizations since ch. 600 explicitly exempts them from chs. 600-646.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

④ Under my s. 648.25 how does a permittee get a copy of the report and how does a proposed report become a final report?

④ Under my s. 648.05 (2)(c) ~~the~~ DHS must approve a business plan. Should the requirement for care management organizations to submit this plan to DHS be included in s. 46.284?

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1658/P1dn
TJD:cjs:rs

January 23, 2009

To Sue Jablonsky:

Please review this preliminary draft to make sure it complies with your intent. Please note that the previous draft on this topic was LRB-0889, but the changes were so significant I started a new draft. You may want to have Tom Lawless of DHS and Fred Nepple of OCI review the draft because I have organized the draft in a different way. I organized the draft in this manner to make it clearer which sections apply to care management organizations since, ch. 600 explicitly exempts them from chs. 600-646.

Under my s. 648.25 how does a permittee get a copy the of report and how does a proposed report become a final report?

Under my s. 648.05 (2) (c) DHS must approve a business plan. Should the requirement for care management organizations to submit this plan to DHS be included in s. 46.284?

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Dodge, Tamara
Sent: Saturday, January 24, 2009 1:21 PM
To: Jablonsky, Sue - DOA
Subject: Care management organization oversight by OCI

I believe you should have this draft by now. Please note that I had to move the OCI appropriation and it will now require an entry in the schedule as well.

Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Jablonsky, Sue - DOA [sue.jablonsky@wisconsin.gov]
Sent: Tuesday, January 27, 2009 8:45 AM
To: Dodge, Tamara
Subject: FW: LRB Draft: 09-1658/P1

From: Nepple, Fred - OCI
Sent: Monday, January 26, 2009 5:43 PM
To: Jablonsky, Sue - DOA
Cc: Montgomery, John C - OCI; Mallow, Eileen K - OCI
Subject: RE: LRB Draft: 09-1658/P1

Sue:

- ✓ 1) Our intent was to have the revenues come into OCI's General Program Operations appropriation. This draft is setting up a totally new numeric appropriation that would segregate these funds from OCI's General Program Operations. This will most likely require OCI to transfer the FTE involved with this function to that appropriation and segregate these revenues from other OCI revenues. This was not our agency's intent.
- ✓ 2) The OCI appropriation only applies to revenue from s. 648.27. The appropriation should also include revenue from s. 648.15.
- 3) The provision for assessing costs in s. 648.27 (1) is worded more restrictive than intended. The cited statutes are all OCI functions. Hence the language, notwithstanding inclusion of a reference to DHS, literally applies only to the cost of OCI functions. The intent is to encompass DHS costs. Also "financial monitoring and analysis" is not done under s. 648.15. S. 648.15 is the authority to require reports, but does not reference the use of those reports for analysis purposes. In addition financial monitoring may encompass sources other than reports by the company. Probably most important inserting the statutory cite appears to exclude the cost of financial monitoring by DHS (in fact "financial" may be too limiting for DHS since its monitoring extends also to quality of services). It probably is appropriate to delete the reference to s. 648.15 and inquire of DHS as to whether the language is broad enough to assess for its costs.
- 4) It is ok to include s. 601.61.
- Ask → 5) Please delete s. 648.20 (3). ^{(2) per Fred} Leave frequency of examination to be determined by OCI.
- 6) Page 9, line 5, add: "The Office shall serve the final examination report on the examinee." Page 9, line 6, delete reference to "adopted" report. Page 9, line substitute "final examination report" for examination report as adopted by the commissioner." Page 9, lines 16 and 17 delete "whether adopted by he commissioner or not." All these changes reflect that completion of an examination of a permittee is not an adjudicated "adoption," unlike for an insurer. Rather it is finalization of the report that is intended for use by the department and the commissioner.

- 7) Although not a substantive issue, it is unclear why the draft repeats verbatim, as s. 648.35, existing s. 648.62, as 601.62 is made applicable to ch. 648.
- 8) Page 10, note: (c) in effect amends corporate law to provide that a declared dividend is not an obligation to pay unless it is approved by the commissioner. (d) creates a right of action for the permittee to recover an illegally paid dividend. That may be implied by the illegality, but the courts have generally said the insurance code does not create a "private right of action" hence this "clarification" that is lifted from ch. 647.
- 9) Page 11, Note: (3) is ok.
- 10) Page 19, Note: the intent is to apply only to those entities that meet the definition of care management organization. DHS may wish to extend this to the "insurer" s. 600.01 (1) (b) 10 b organizations, but that topic has not been discussed.
- 11) Page 20, Note: Recoveries under (4) are intended to ultimately allow payout of any resulting excess deposit back to the permittee to "refund" any "restored" amount under (5). It is unlikely that this will occur often since the recovery will be out of an insolvency proceeding. Moreover to the extent it does occur it is likely to be a substantial time after the "restoration" is required. Hence the intent is that the permittee "restores" and gets a refund only if or when there is a recovery. The language probably works as it.

Fred Nepple, General Counsel

Fred.Nepple@oci.state.wi.us

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

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From: Jablonsky, Sue - DOA

Sent: Monday, January 26, 2009 2:54 PM

To: Nepple, Fred - OCI

Subject: FW: LRB Draft: 09-1538/P1 Health insurance reform initiatives

This is the draft Pam had done before

From: Willing, Krista - DOA

Sent: Friday, January 23, 2009 4:04 PM

To: Jablonsky, Sue - DOA

Subject: FW: LRB Draft: 09-1538/P1 Health insurance reform initiatives

From: Henry, Patty [<mailto:Patty.Henry@legis.wisconsin.gov>]

Sent: Tuesday, January 20, 2009 11:00 AM

To: Willing, Krista - DOA

Cc: Gauger, Michelle C - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA

1/27/2009

Subject: LRB Draft: 09-1538/P1 Health insurance reform initiatives

Following is the PDF version of draft 09-1538/P1.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1658/P1

TJD:cjs:rs

In: 1/27/09

stays RMNR

DOA:.....Jablonsky, BB0236 - Oversight of care management organizations
by Office of the Commissioner of Insurance

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

This is a preliminary draft. An analysis will be provided in a subsequent draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 20.145 (1) (gh) of the statutes is created to read: 648.15 and
3 20.145 (1) (gh) All moneys received under s. 648.27 for expenses related to
4 administering oversight of care management organizations under ch. 648 and for
5 transferring to the appropriation account under s. 20.435 (4) (kv) the amount
6 allocated by the commissioner of insurance.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 2. 20.435 (4) (jt) of the statutes is created to read:

20.435 (4) (jt) *Care management organization; insolvency assistance.* All moneys received as assessments under s. 648.75 (3) for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees of an insolvent or financially hazardous care management organization.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

****NOTE: Should this and the next appropriation actually be under s. 20.435 (7)?

SECTION 3. 20.435 (4) (kv) of the statutes is created to read:

20.435 (4) (kv) *Care management organization; oversight.* All moneys transferred from the appropriation account under s. 20.145 (1) (gh), for expenses related to financial certification, monitoring, and assessment of care management organizations that are subject to ch. 648.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 4. 46.284 (3m) of the statutes is created to read:

46.284 (3m) PERMIT REQUIRED. A care management organization that is described under s. 600.01 (1) (b) 10. a., to which s. 600.01 (1) (b) 10. b. does not apply and that is certified under sub. (3) shall apply for a permit with the office of the commissioner of insurance under ch. 648.

SECTION 5. 600.03 (34) of the statutes is amended to read:

600.03 (34) "Office" means ~~"the office of the insurance commissioner"~~
commissioner of insurance of this state.

SECTION 6. Chapter 648 of the statutes is created to read:

CHAPTER 648

REGULATION OF CARE

MANAGEMENT ORGANIZATIONS

1 **648.01 Definitions.** In this chapter:

2 (1) "Care management organization" means an entity described in s. 46.284
3 (3m).

4 (2) "Department" means the department of health services.

5 (3) "Enrollee" has the meaning given in s. 46.2805 (3).

6 (4) "Permittee" means a care management organization issued a permit under
7 this chapter.

8 **648.03 Applicability of other laws.** Notwithstanding s. 600.01 (1) (b) 10. a.,
9 ss. 600.01, 600.02, 600.03, and 600.12 apply to this chapter.

10 **648.05 Permit.** (1) PERMIT REQUIRED. After December 31, 2009, no care
11 management organization may provide services to its enrollees without a permit
12 under this chapter.

13 (2) APPLICATION. A care management organization applying for a permit shall
14 submit all of the following information in the format required by the commissioner:

15 (a) The names, addresses and occupations of all controlling persons and
16 directors and principal officers of the care management organization currently and
17 for the preceding 10 years, unless the commissioner waives this requirement.

18 (b) Business organization documents, including articles and bylaws if
19 applicable.

20 (c) A business plan approved by the department, including a projection of the
21 anticipated operating results at the end of each of the next 3 years of operation, based
22 on reasonable estimates of income and operating expenses.

23 (d) Any other relevant documents or information that the commissioner
24 reasonably requires after consulting with the department.

1 **(3) STANDARDS FOR ISSUING PERMIT.** The commissioner may issue a permit to the
2 care management organization if the commissioner finds, after consulting with the
3 department, all of the following:

4 (a) All requirements of law have been met.

5 (b) All the directors and principal officers or any controlling person are
6 trustworthy and competent and collectively have the competence and experience to
7 engage in the proposed services.

8 (c) The business plan is consistent with the interests of the care management
9 organization's enrollees and the public.

****NOTE: I have omitted from this section the last requirement that the care
management organizations be certified by and contract with the department as this
requirement is already set forth in the definition of care management organization.

10 **(4) SUSPENSION OR REVOCATION.** The commissioner may suspend or revoke a
11 permit issued under this chapter if the commissioner finds, after consulting with the
12 department, any of the following:

13 (a) The permittee violated a law or rule, including a rule establishing standards
14 for the financial condition of care management organizations.

15 (b) The permittee is in a financially hazardous condition.

16 (c) The permittee is controlled or managed by persons who are incompetent or
17 untrustworthy.

18 (d) The permittee conceals records from the commissioner.

19 (e) The permittee's business plan is not in the public interest or is not prudent.

20 (f) The permittee ceases to be certified by or maintain a contract with the
21 department.

22 **648.10 Powers and duties of the commissioner.** The commissioner may
23 do any of the following:

1 (1) Promulgate rules that are necessary to carry out the intent of this chapter,
2 including, after consulting with the department, standards for the financial
3 condition of care management organizations.

4 (2) Use the authority granted under ss. 601.41, 601.42, 601.43, 601.44, 601.61,
5 601.62, 601.63, and 601.64, including the authority to issue orders, to enforce this
6 chapter and to ensure that a care management organization has sufficient financial
7 resources.

****NOTE: I have added s. 601.61 to this list. Is that okay?

8 **648.15 Reports and replies.** (1) **REPORTS.** The commissioner may require
9 from any care management organization any of the following:

10 (a) Statements, reports, answers to questionnaires, and other information in
11 whatever reasonable form the commissioner designates and at such reasonable
12 intervals as the commissioner chooses, or from time to time.

13 (b) Full explanation of the programming of any data storage or communication
14 system in use.

15 (c) Information from any books, records, electronic data processing systems,
16 computers, or any other information storage system at any reasonable time in any
17 reasonable manner.

18 (d) Statements, reports, audits, or certification from a certified public
19 accountant or an actuary approved by the commissioner.

20 (2) **FORMS.** The commissioner may prescribe forms for the reports under sub.
21 (1) and specify who shall execute or certify such reports.

22 (3) **ACCOUNTING METHODS.** The commissioner may prescribe reasonable
23 minimum standards and techniques of accounting and data handling to ensure that
24 timely and reliable information will exist and will be available to the commissioner.

1 (4) REPLIES. Any officer or manager of a care management organization, any
2 person controlling or having a contract under which the person has a right to control
3 a care management organization, whether exclusively or otherwise, or any person
4 with executive authority over or in charge of any segment of such a care management
5 organization's affairs, shall reply promptly in writing or in another designated form,
6 to any written inquiry from the commissioner requesting a reply.

7 (5) VERIFICATION. The commissioner may require that any communication
8 made to the commissioner under this section be verified.

9 (6) IMMUNITY. In the absence of actual malice, no person shall be subject to
10 damages in an action for defamation based on a communication to the commissioner
11 required by law under this chapter or by the commissioner under this chapter.

12 (7) EXPERTS. The commissioner may employ experts to assist the commissioner
13 in an examination or in the review of any transaction subject to approval under this
14 chapter. The care management organization that is the subject of the examination,
15 or that is a party to a transaction under review, including the person acquiring,
16 controlling, or attempting to acquire the care management organization, shall pay
17 the reasonable costs incurred by the commissioner for the expert and related
18 expenses.

19 **648.20 Examinations.** (1) POWER TO EXAMINE. (a) To inform himself or herself
20 about a matter related to the enforcement of this chapter, the commissioner may
21 examine the affairs and condition of any permittee.

22 (b) So far as reasonably necessary for an examination under par. (a), the
23 commissioner may examine the accounts, records, or documents so far as they relate
24 to the permittee, of any of the following:

1 1. An officer, manager, employee, or person who has executive authority over
2 or is in charge of any segment of the permittee's affairs.

3 2. A person controlling or having a contract under which the person has the
4 right to control the permittee whether exclusively or with others.

5 3. A person who is under the control of the permittee, or a person who is under
6 the control of a person who controls or has a right to control the permittee whether
7 exclusively or with others.

8 (c) On demand, every permittee shall make available to the commissioner for
9 examination any of its own accounts, records, documents, or evidences of
10 transactions.

11 (d) On order of the commissioner any examinee under this chapter shall bring
12 to the office for examination such records as the order reasonably requires.

13 (2) DUTY TO EXAMINE. The commissioner shall examine every permittee at least
14 once every 3 years.

15 (2) (3) AUDITS OR ACTUARIAL OR OTHER EVALUATIONS. In lieu of all or part of an
16 examination under sub. (1) or (2), or in addition to it, the commissioner may order
17 an independent audit by certified public accountants or an actuarial or other
18 evaluation by actuaries or other experts approved by the commissioner of any
19 permittee. Any accountant, actuary, or other expert selected is subject to rules
20 respecting conflicts of interest promulgated by the commissioner. Any audit or
21 evaluation under this section is subject to s. 648.25, so far as applicable.

22 (3) (4) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination under
23 this section, the commissioner may accept the report of an audit already made by
24 certified public accountants or of an actuarial or other evaluation already made by
25 actuaries or other experts approved by the commissioner, or the report of an

1 examination made by another government agency in this state, the federal
2 government, or another state.

3 ^{(B)(4)} (5) PURPOSE AND SCOPE OF EXAMINATION. An examination may but need not cover
4 comprehensively all aspects of the permittee's affairs and condition. The
5 commissioner shall determine the exact nature and scope of each examination, and
6 in doing so shall take into account all relevant factors, including the length of time
7 the permittee has been doing business, the length of time the permittee has been
8 certified by the department, the nature of the business being examined, the nature
9 of the accounting records available, and the nature of examinations performed
10 elsewhere.

11 **648.25 Conducting examinations. (1) ORDER OF EXAMINATION.** For each
12 examination under s. 648.20, the commissioner shall issue an order stating the scope
13 of the examination and designating the examiner in charge. Upon demand, a copy
14 of the order shall be provided to the examinee.

15 **(2) ACCESS TO EXAMINEE.** Any examiner authorized by the commissioner shall,
16 for the purposes of the examination, have access at all reasonable hours to the
17 premises and to any property of the examinee.

18 **(3) COOPERATION.** The officers, employees, and agents of the examinee shall
19 comply with every reasonable request of the examiners for assistance in any matter
20 relating to the examination. No person may obstruct or interfere with the
21 examination in any way other than by legal process.

22 **(4) CORRECTION OF BOOKS.** If the commissioner finds the accounts or records to
23 be inadequate for proper examination of the condition and affairs of the permittee
24 or improperly kept or posted, the commissioner may employ experts to rewrite, post,
25 or balance them at the expense of the permittee.

1 (5) REPORT ON EXAMINATION. The examiner in charge of an examination shall
2 make a proposed report of the examination, including information and analysis
3 ordered in sub. (1), together with the examiner's recommendations. Preparation of
4 the proposed report may include conferences with the examinee or the examinee's
5 representatives at the option of the examiner in charge. *The commissioner shall*

6 *serve the final examination report on the examinee.*
7 (6) COPIES FOR BOARD. The permittee shall furnish copies of the adopted or
8 final examination report to each member of its board or governing body.

9 (7) COPIES FOR OTHER PERSONS. The commissioner may furnish, without cost or
10 at a price to be determined by the commissioner, a copy of the adopted report to the
11 insurance commissioner of each state in the United States and of each foreign
12 jurisdiction in which the examinee is authorized to do business, and to any other
13 interested person in this state or elsewhere.

14 (8) REPORT AS EVIDENCE. In any proceeding by or against the permittee or any
15 officer or agent of the permittee the final examination report as adopted by the
16 commissioner shall be admissible as evidence of the facts stated in the report. In any
17 proceeding commenced under this chapter, the final examination report whether adopted
18 by the commissioner or not shall be admissible as evidence of the facts stated in the
19 report. In any proceeding by or against the examinee, the facts asserted in any report
20 properly admitted in evidence shall be presumed to be true in the absence of contrary
21 evidence.

22 **648.27 Costs of examination.** (1) COSTS TO BE PAID BY CARE MANAGEMENT
23 ORGANIZATIONS. Permittees shall pay the reasonable estimate of costs of
24 examinations under s. 648.20, of review of applications under s. 648.05, and of
financial monitoring and analysis of care management organizations under s. 648.15

1 or 648.20 by the commissioner and the department, including overhead and fixed
2 costs, by a system of regular annual billings.

3 (2) DETERMINATION OF COSTS. Annually, the commissioner shall determine the
4 estimated costs under sub. (1) for the commissioner and the department. The
5 commissioner shall serve a request for payment on each permittee allocating the cost
6 to each permittee in an amount that the commissioner determines reflects the
7 permittee's proportionate share of projected enrollment in the department's annual
8 contracting period.

9 (3) PAYMENT DEADLINE. The permittee shall pay the amount determined by the
10 commissioner within 30 days of service of the request for payment under sub. (2).

11 **648.30 Nondisclosure of information.** (1) TYPES OF INFORMATION. The office
12 may refuse to disclose and may prevent any other person from disclosing any of the
13 following:

14 (a) Testimony, reports, records, and information that are obtained, produced,
15 or created in the course of an inquiry under s. 648.15.

16 (b) Testimony, reports, records, and information that are obtained, produced,
17 or created in the course of an examination under s. 648.20.

18 (c) Testimony, reports, records, communications, and information that are
19 obtained by the office from, or provided by the office to, any of the following, under
20 a pledge of confidentiality or for the purpose of assisting or participating in
21 monitoring activities or in the conduct of any inquiry, investigation, or examination:

22 1. The National Association of Insurance Commissioners.

23 2. An agent or employee of the National Association of Insurance
24 Commissioners.

25 3. The insurance commissioner of another state.

1 4. An agent or employee of the insurance commissioner of another state.

2 5. An international, federal, state, or local regulatory or law enforcement
3 agency, including the department.

4 6. An agent or employee of an agency described in subd. 5.

5 (2) WAIVER AND APPLICABILITY OF THE PRIVILEGE. Section 601.465 (2m) (a) to (d)
6 applies to the privilege under sub. (1).

7 **648.35 Enforcement procedure. (1) INJUNCTIONS AND RESTRAINING ORDERS.**

8 The commissioner may commence an action in circuit court in the name of the state
9 to restrain by temporary or permanent injunction or by temporary restraining order
10 any violation of this chapter, any rule promulgated under this chapter, or any order
11 issued under s. 648.10 (2). The commissioner need not show irreparable harm or lack
12 of an adequate remedy at law in an action commenced under this subsection.

13 (2) ORDERS. The commissioner shall issue any orders under the procedures
14 described in s. 601.63 and shall hold any hearings under the procedures described
15 in s. 601.62.

16 (3) COMPULSIVE FORFEITURES. If a person does not comply with an order issued
17 under s. 648.10 (2) within 2 weeks after the commissioner has given the care
18 management organization notice of the commissioner's intention to proceed under
19 this subsection, the commissioner may commence an action for a forfeiture in such
20 sum as the court considers just, but not exceeding \$5,000 for each day that the
21 violation continues after the commencement of the action until judgment is
22 rendered. No forfeiture may be imposed under this subsection if at the time the
23 action was commenced the care management organization was in compliance with
24 the order, nor for any violation of an order occurring while any proceeding for judicial
25 review of the order was pending, unless the court in which the proceeding was

1 pending certifies that the claim of invalidity or nonapplicability of the order was
2 frivolous or a sham. If after judgment is rendered the care management organization
3 does not comply with the order, the commissioner may commence a new action for
4 a forfeiture and may continue commencing actions until the person complies. The
5 proceeds of all actions under this subsection, after deduction of the expenses of
6 collection, shall be paid into the common school fund of the state.

7 (4) FORFEITURES AND CIVIL PENALTIES. (a) *Restitutionary forfeiture*. Whoever
8 violates an order issued under s. 648.10 (2) that is effective under s. 601.63, any
9 section of this chapter, or any rule relating to this chapter shall forfeit to the state
10 twice the amount of any profit gained from the violation, in addition to any other
11 forfeiture or penalty imposed.

12 (b) *Forfeiture for violation of order*. Whoever violates an order issued under s.
13 648.10 (2) that is effective under s. 601.63 shall forfeit to the state not more than
14 \$1,000 for each violation. Each day that the violation continues is a separate offense.

15 (c) *Forfeiture for violation of statute or rule*. Whoever violates, intentionally
16 aids in violating, or knowingly permits a person over whom he or she has authority
17 to violate a section of this chapter or a rule promulgated under this chapter shall
18 forfeit to the state not more than \$1,000 for each violation. If the section or rule
19 violated imposes a duty to make a report to the commissioner, each week of delay in
20 complying with the duty is a new violation.

21 (d) *Procedure*. The commissioner may order any person to pay a forfeiture
22 imposed under this subsection, which shall be paid into the common school fund. If
23 the order is issued without a hearing, the affected person may demand a hearing
24 through procedures described under s. 601.62 (3) (a). If the person fails to request
25 a hearing, the order is conclusive as to the person's liability. The scope of review for

1 forfeitures ordered is that specified under s. 227.57. The commissioner may cause
2 an action to be commenced to recover the forfeiture. Before an action is commenced,
3 the commissioner may compromise the forfeiture.

4 (5) CRIMINAL PENALTY. Whoever intentionally violates or intentionally permits
5 any person over whom he or she has authority to violate or intentionally aids any
6 person in violating any section of this chapter, any rule promulgated to administer
7 this chapter, or any order issued under s. 648.10 (2) that is effective under s. 601.63
8 is guilty of a Class I felony, unless a specific penalty is provided elsewhere in the
9 statutes. Intent has the meaning expressed under s. 939.23.

10 **648.45 Affiliates of permittee.** (1) INFORMATION. A permittee and a person
11 attempting to acquire or having control of a permittee, shall report to the
12 commissioner the information concerning the permittee, its affiliates, and the person
13 attempting to acquire control of the permittee that the commissioner requires by
14 rule. The commissioner may promulgate rules prescribing the timing of reports
15 under this subsection, including requiring periodic reporting and the form and
16 procedure for filing reports.

17 (2) REPORT FOR AFFILIATES. The permittee may report on behalf of all affiliated
18 entities if it provides all the information that would be required if each affiliate
19 reported separately.

20 (3) CONSENT TO JURISDICTION. Every permittee shall promptly submit to the
21 commissioner a statement from each of its affiliates that the affiliate agrees to be
22 subject to the jurisdiction of the commissioner and the courts of this state for the
23 purposes of this chapter. A governmental unit is not subject to this requirement. The
24 commissioner may exempt other affiliates from this subsection.

1 (4) INFORMATION ORDER. The commissioner may, by order, require any permittee
2 or any person attempting to acquire or having control of the permittee, to report
3 information under sub. (1) or other information to the commissioner.

4 (5) TRANSACTIONS WITH AFFILIATES. Neither a permittee nor an affiliate of the
5 permittee may enter into a transaction between the permittee and affiliate unless
6 all of the following apply:

7 (a) The transaction at the time it is entered into is reasonable and fair to the
8 interests of the permittee.

9 (b) The books, accounts, and records of each party to the transaction are kept
10 in a manner that clearly and accurately discloses the nature and details of the
11 transaction and, in accordance with generally accepted accounting principles,
12 permits ascertainment of charges relating to the transaction.

13 (c) The permittee's financial condition following any dividends or distributions
14 to shareholders or a person having control of the permittee is reasonable in relation
15 to the permittee's outstanding liabilities and is adequate to its financial needs.

16 (d) The transaction complies with any other standard that the commissioner,
17 after consulting with the department, prescribes by rule.

18 (6) TRANSACTIONS SUBJECT TO DISCLOSURE. (a) *Affiliated transactions to be*
19 *reported.* 1. The commissioner, after consulting with the department, may
20 promulgate rules requiring a permittee, a person attempting to acquire or having
21 control of a permittee, and affiliates of a permittee to report a transaction or a group
22 or series of transactions, if all of the following are satisfied:

23 a. The transaction is between a permittee and a person attempting to acquire
24 or having control of the permittee or an affiliate of the permittee, or the transaction
25 directly or indirectly benefits the person or affiliate.

1 b. The transaction is, or the group or series of transactions are, material to the
2 permittee.

3 2. Transactions that are material to a permittee for the purposes of subd. 1.
4 include management contracts, service contracts, and cost-sharing arrangements.
5 The commissioner, after consulting with the department, may prescribe by rule
6 standards for determining whether a transaction is material under this subsection.

7 3. No permittee, person attempting to acquire or having control of a permittee,
8 or affiliate of the permittee may enter into a transaction required to be reported to
9 the commissioner under this subsection unless the permittee, person, and affiliate
10 report the transaction to the commissioner in the form and by the date before the
11 effective date of the transaction that are prescribed by the commissioner by rule,
12 after consulting with the department. The commissioner may not require the
13 transaction to be reported earlier than 30 days before the effective date of the
14 transaction.

15 (b) *Disapproval.* The commissioner may, within the period prescribed in par.
16 (a) 3., disapprove any transaction reported under par. (a) if the commissioner finds,
17 after consulting with the department, that it would violate the law or would be
18 contrary to the interests of enrollees of the permittee, the department, or the public.

19 (c) *Transactions prohibited.* No permittee, person attempting to acquire or
20 having control of the permittee, or affiliate of the permittee may enter into a
21 transaction that is not reported as required under par. (a) or that is disapproved by
22 the commissioner under par. (b).

23 (d) *Voidable transactions.* If a permittee, person attempting to acquire or
24 having control of the permittee, or affiliate enters into a transaction in violation of
25 this section, the permittee may void the transaction, obtain an injunction, and

1 recover from the person or affiliate the amount necessary to restore the permittee to
2 its condition had the transaction not occurred. The commissioner may order a
3 permittee to void the transaction, to commence an action against the person or
4 affiliate, or to take other action.

5 (e) *Required financial conditions.* The commissioner, after consulting with the
6 department, may promulgate rules for determining adequacy of financial condition
7 under this section.

8 (f) *Exemption if permittee reports.* Paragraph (a) does not apply to a person
9 attempting to acquire or having control of, or an affiliate of, a permittee, if the
10 permittee reports on behalf of the person or on behalf of the affiliate, and the
11 transaction is not disapproved by the commissioner under par. (b).

12 (7) DIVIDENDS AND DISTRIBUTIONS. (a) A permittee may not pay a dividend or
13 distribution, and an affiliate of a permittee may not accept a dividend or distribution,
14 unless the permittee reports the dividend or distribution to the commissioner at least
15 30 days before payment and the commissioner does not disapprove the dividend or
16 distribution within that period.

17 (b) The commissioner, after consulting with the department, may promulgate
18 rules under this section that do any of the following:

19 1. Prescribe the form and content of and procedure for filing reports under this
20 subsection.

21 2. Exempt dividends or distributions from the reporting requirement under
22 par. (a) under conditions that the commissioner determines will not jeopardize the
23 financial condition of the permittee.

****NOTE: I do not understand the intent of paragraphs (c) and (d) of your draft language. Please advise as to what these paragraphs add that is different from what is required by sub. (7) already.

Ins 17-1
→

(8) DUTIES OF OFFICERS AND DIRECTORS. (a) No director or officer of a permittee or of an affiliate of a permittee may permit, participate in, or assent to a transaction or payment or acceptance of a dividend or distribution prohibited under this chapter.

(b) An officer or director of a permittee or of an affiliate of a permittee who knows, or reasonably should know, that the permittee or affiliate has entered into a transaction or paid a dividend or distribution that violates this chapter shall report the transaction, dividend, or distribution to the commissioner in writing within 30 days after attaining that knowledge. Section 648.15 (6) applies to a report under this section, and the report is confidential unless the commissioner finds it necessary to disclose the report for the purpose of enforcing this chapter.

648.50 Management changes. (1) APPROVAL REQUIRED. No proposed plan of merger or other plan for acquisition of control of a permittee may be executed unless the commissioner, after consulting with the department, approves the plan.

(2) GROUNDS FOR APPROVAL. The commissioner shall approve the plan under this section if the commissioner finds, after a hearing, that it would not violate the law or be contrary to the interests of the public, the department, or the enrollees.

(3) INFORMATION REQUIRED. A permittee shall report to the commissioner any changes in directors or principal officers after a permit is issued, together with biographical data on the new director or officer that the commissioner requires by rule.

****NOTE: I included sub. (3) because it had been requested in the original request and none of the new suggested language seemed to cover this issue. Is that okay?

648.55 Commissioner's summary orders. (1) The commissioner, after consulting with the department, may make and serve an order on a permittee, requiring it to stop providing services under the department contract, or to take

1 corrective measures, without notice and before hearing, if it appears to the
2 commissioner that irreparable harm to the property or business of the permittee or
3 to the interests of its enrollees or the public, will occur unless the commissioner acts
4 with immediate effect and one of the following applies:

5 (a) The permittee is not in compliance with a rule establishing standards for
6 the financial condition of care management organizations.

7 (b) Grounds exist to suspend or revoke the permittee's permit.

8 (2) An order issued under this subsection is effective immediately.

9 (3) The permittee has the rights provided under s. 601.62. The commissioner
10 may serve upon the permittee notice of hearing under the procedures under s. 601.62
11 simultaneously with service of the order under sub. (1).

12 (4) The commissioner may keep proceedings under this section confidential.

13 **648.65 Enrollee immunity. (1) IMMUNITY.** An enrollee of a care management
14 organization is not liable for health care, service, equipment, or supply charges that
15 are covered under the care management organization's contract with the
16 department.

17 (2) PROHIBITED RECOVERY ATTEMPTS. No person may bill, charge, collect a deposit
18 from, seek compensation from, file or threaten to file with a credit reporting agency
19 with respect to, or have any recourse against an enrollee or any person acting on the
20 enrollee's behalf, for any health care, service, equipment, or supply charges for which
21 the enrollee or person acting on his or her behalf is not liable under sub. (1).

22 (3) IMMUNITY NOT AFFECTED. The immunity of an enrollee under subs. (1) and
23 (2) is not affected by any of the following:

24 (a) A breach or default on an agreement by the care management organization
25 or the failure of any person to compensate the provider.

(b) The insolvency of the care management organization or any person contracting with the care management organization or the commencement or the existence of conditions permitting the commencement of insolvency, delinquency, or bankruptcy proceedings involving the care management organization or other person, regardless of whether the care management organization or other person has agreed to compensate, directly or indirectly, the provider for health care, services, equipment, or supplies for which the enrollee is not liable under sub. (1)

(c) The inability of the provider or other person who is owed compensation for health care, services, equipment, or supplies to obtain compensation from the care management organization.

***NOTE: Do you want this section to apply to enrollees of all care management organizations or only of those required to have a permit under chapter 648? If the section applies to all enrollees, I wonder if this section should be added to ch. 46.

648.75 Insolvency funding. (1) DEPOSIT REQUIRED. A permittee shall deposit an amount established by the contract with the department, and not less than \$250,000, using the procedures under s. 601.13.

(2) RELEASE OF DEPOSIT. A deposit under this section may be released only with the approval of the commissioner by the procedures under s. 601.13 (10) and only in one of the following circumstances:

(a) To pay an assessment under sub. (3).

(b) To pay creditors of the permittee according to the priority determined by the department if the permittee is insolvent, dissolves, or is subject to an insolvency proceeding, including a bankruptcy proceeding.

(3) ASSESSMENT. The department may assess an amount from each permittee's deposit for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees of an insolvent or financially hazardous permittee. The

1 department's assessment shall be allocated to each permittee's deposit in an amount
2 that reflects the permittee's proportionate share of projected enrollment in the
3 department's annual contracting period. The commissioner may authorize release,
4 and the department of administration shall pay to the department the assessed
5 amount for the purposes of this subsection.

6 ⁽⁵⁾ ~~(B)~~ ⁽⁴⁾ RECOVERY. The department may recover, and may file a claim or bring civil
7 action to recover, from the insolvent or financially hazardous permittee any amount
8 that the department assesses and pays under sub. (3). Any amount recovered shall
9 be restored to each permittee's deposit in the same proportion as the assessment.

10 ^(B) ⁽⁴⁾ ~~(5)~~ RESTORATION. A permittee shall restore its deposit that is subject to an
11 assessment under sub. (3) within 30 days after the assessment, unless the office,
12 after consulting with the department, authorizes a longer period, which shall not
13 exceed 2 years.

****NOTE: Please clarify the intent of this section. It seems that every permittee is assessed from their deposit to pay for one permittee's insolvency. Then the non-insolvent permittees must replace the amount of the deposit that was used to pay for services to enrollees of the insolvent permittee. The amount paid for services to the insolvent permittee's enrollees is also recovered from the insolvent permittee. Is that correct?

14 (END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1658/P2ins
TJD:.....

1

INSERT A

Under current law, a care management organization is certified by and contracts with DHS to administer the Family Care Program. The Family Care Program provides financial assistance for long-term care to eligible individuals who are either a frail elder or a person who is at least 18 years old with a physical disability or a developmental disability.

This bill requires that, in order to provide services, a care management organization must also obtain a permit from OCI. If a care management organization administers a program that includes primary or acute medical care services, then that organization is already subject to oversight by OCI and is not required to obtain a permit.

To obtain a permit, the care management organization must submit an application to the commissioner of OCI (commissioner) containing certain information. The commissioner may issue the permit if, after consulting with DHS, the commissioner finds that 1) the care management organization has met all requirements of law, 2) the directors, principal officer, or any controlling person are trustworthy and competent to engage in the proposed services, and 3) the care management organization's business plan is consistent with the interests of Family Care Program enrollees and the public. Under certain circumstances, the commissioner may revoke or suspend the permit.

With respect to oversight and enforcement of laws on care management organizations, the commissioner has powers similar to those granted to oversee and enforce laws on insurance companies. Care management organizations that have a permit are subject to requirements similar to requirements in current law applicable to insurance companies. Requirements applicable to care management organizations include complying with the commissioner's request for reports, submitting to examinations and audits, paying ^{the} costs of examination, complying with rules promulgated by OCI, reporting transactions with affiliates of the care management organization, and reporting changes in ownership or management of the care management organization to OCI. To retain a permit, a care management organization must also make a monetary deposit and must pay for assessments to the deposit used to pay for services on behalf of an insolvent or financially hazardous care management organization.

The bill also requires that Family Care Program enrollees not be held liable for any obligations of the care management organization. Other entities may not bill or otherwise try to hold the enrollee responsible for the care management organization's obligations.

2

INSERT 1-2

3

SECTION 1. 20.145 (1) (g) (intro.) of the statutes is amended to read:

Insurance

under the bill

under the bill

with a permit

which is assessed in amount determined by DHS

1 20.145 (1) (g) *General program operations.* (intro.) The amounts in the
2 schedule for general program operations, including organizational support services,
3 ^{and} oversight of care management organizations, and for ~~transfer to~~ the appropriation
4 account under s. 20.435 (4) (kv) the amount allocated by the commissioner of
5 insurance. All of the following shall be credited to this appropriation account:

History: 1971 c. 40 s. 93; 1971 c. 125 ss. 51, 52, 53, 54, 55, 522 (1); 1973 c. 117, 333, 336; 1975 c. 37, 39; 1975 c. 147 s. 54; 1975 c. 372 s. 41; 1977 c. 29, 418; 1979 c. 34 ss. 121 to 127, 2102 (26) (a); 1979 c. 109 s. 16; 1979 c. 221, 313; 1981 c. 20 ss. 142m to 145, 2202 (26) (b); 1983 a. 27, 120; 1985 a. 29, 340; 1987 a. 27; 1989 a. 187; 1991 a. 39, 315; 1993 a. 16; 1995 a. 10, 27, 463; 1997 a. 27, 35, 227, 252; 2001 a. 16; 2003 a. 111; 2005 a. 74; 2007 a. 20.

6 INSERT 17-1

7 (c) A permittee may declare a dividend or distribution that is conditioned upon
8 the permittee's compliance with this subsection. A declaration of a dividend or
9 distribution under this subsection does not confer rights to the proposed recipient of
10 the dividend or distribution unless this subsection is complied with ^{and} is void if the
11 dividend or distribution is disapproved by the commissioner under par. (a).
12 (d) In addition to any ^{other} remedies available, a permittee may recover from the
13 recipient any dividend or distribution paid in violation of this subsection.

Dodge, Tamara

From: Dodge, Tamara
Sent: Wednesday, January 28, 2009 10:31 AM
To: Jablonsky, Sue - DOA
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Sue:

It is not necessary to have a purpose under section 2 because this subdivision is only referring to where the money is coming from not how it is being used.

I will broaden the title to s. 648.27 to be "costs" instead of "costs of examination."

I presume you are handling correspondence with DHS with regards to Fred's second point.

I will wait for a bit to complete a redraft of this draft, but I am told we should have the drafts finalized tomorrow morning.

Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Jablonsky, Sue - DOA [mailto:sue.jablonsky@wisconsin.gov]
Sent: Wednesday, January 28, 2009 8:47 AM
To: Dodge, Tamara
Subject: FW: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

From: Nepple, Fred - OCI
Sent: Wednesday, January 28, 2009 8:40 AM
To: Jablonsky, Sue - DOA; Lawless, Thomas M - DHS
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Sue

I haven't made a complete review but note three items: Should the appropriation in section 2 include a purpose? Also DHS may wish to review s. 648.27 (1)-it may not be broad enough language for assessment to encompass all the DHS expected cost to be included. E.g. quality monitoring? Finally a minor item it might be desirable to have a broader title to s. 648.27 (1).

Fred Nepple, General Counsel
Fred.Nepple@oci.state.wi.us

1/28/2009

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125 S Webster St Madison WI 53702

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From: Jablonsky, Sue - DOA
Sent: Wednesday, January 28, 2009 8:34 AM
To: Nepple, Fred - OCI; Lawless, Thomas M - DHS
Subject: FW: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

This draft reflects changes requested by OCI

From: Henry, Patty [<mailto:Patty.Henry@legis.wisconsin.gov>]
Sent: Tuesday, January 27, 2009 5:20 PM
To: Jablonsky, Sue - DOA
Cc: Gauger, Michelle C - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Following is the PDF version of draft 09-1658/P2.

Post-It® Fax Note	7671	Date	# of pages ▶
To	Jami	From	Sue
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

A few more changes...

From: Nepple, Fred - OCI
Sent: Wednesday, January 28, 2009 3:42 PM
To: Jablonsky, Sue - DOA
Cc: Ruch, Guenther H - OCI; Mallow, Eileen K - OCI; Peterson, Roger A - OCI; Stegall, Jennifer L - OCI
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

- 1) I think the appropriation works as to the 10%.
- ✓2) An oversight my part: page 10 delete lines 1 to 5-not applicable.

✓ Otherwise appears ok. It may be desirable to delete the word "financial" on page 10, line 16 to preserve the authority to assess for non-financial monitoring, unless DHS has no need for that funding.

Fred Nepple, General Counsel
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From: Jablonsky, Sue - DOA
Sent: Wednesday, January 28, 2009 2:01 PM
To: Nepple, Fred - OCI
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Correct. I just want to make sure that the way the language is written makes it clear that the assessment revenue is exempt from the 10% lapse.

From: Nepple, Fred - OCI
Sent: Wednesday, January 28, 2009 1:49 PM
To: Jablonsky, Sue - DOA
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Sue

Dodge, Tamara

From: Jablonsky, Sue - DOA [sue.jablonsky@wisconsin.gov]
Sent: Wednesday, January 28, 2009 4:20 PM
To: Dodge, Tamara
Subject: FW: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance
Importance: High

From: Lawless, Thomas M - DHS
Sent: Wednesday, January 28, 2009 4:16 PM
To: Jablonsky, Sue - DOA; Nepple, Fred - OCI
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance
Importance: High

A few comments so far, collated from others, and I am working on my own at this moment:

1. P. 3, L.2: CMO is defined as an entity described in 46.284(3m); there is no (3m). Given the drafter's note on p.4, after line 9 about the definition incorporating the fact of certification and contracting, I think this cross-reference should be to 46.2805(1).
2. We are proposing new Family Care statute that defines managed care organization as an entity certified and under contract with the Department to deliver the Family Care, PACE or Partnership benefit (also defined), yet this defines care management organization using the old definition. Maybe it should reference the new definition and then treat the Family Care MCOs differently. See indented text below. N/A
3. I think we should add to OCI permit standards in 648.02 (3) (b) that "All the directors and principal officers of any controlling person and are trustworthy and competent and collectively have the competence and experience to engage in the proposed services ... (add) and are not excluded from participation in Medicaid under Section 1128 or 1128A of the Social Security Act." ← 42 U.S.C. 1320a-7 or 42 USC 1320a-7a

The proposed new definitions are in 46.2805 Definitions; long-term care. In ss. 46.2803 to 46.2895:

(7w) "Managed care organization" means an entity that is certified as meeting the requirements for a managed care organization under s. 46.284 (3) and that has a contract under s. 46.284 (2) to manage the family care benefit or an entity that has a contract to manage the PACE benefit or partnership benefit.

(7y) "Managed long-term care benefit" means financial assistance for health and long-term care and support items available to an enrollee in a Family Care, PACE or Partnership managed care organization. Managed long-term care benefits include:

(a) The family care benefit, which consists of Medicaid long-term care benefits including home and community-based waiver services, case management services, nursing facility services, nursing services, home health services, personal care services, durable medical equipment, medical supplies, occupational therapy, physical therapy, speech/language pathology services and transportation services except ambulance and common carrier, mental health and alcohol and other drug abuse that are not inpatient or provided by a physician, to the extent these services are included in an enrollee's individualized service plan.

(b) The PACE benefit as defined in section 49.45 (58) and 42 USC 1395eee.

(c) The partnership benefit as defined in an amendment to the state medical assistance plan, as authorized in 42 USC 1396u-2.

From: Jablonsky, Sue - DOA
Sent: Wednesday, January 28, 2009 11:44 AM
To: Nepple, Fred - OCI; Lawless, Thomas M - DHS
Subject: FW: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

I need any comments ASAP because LRB will be doing a compile tomorrow so I need to stuff over there

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Tami

Tamara J. Dodge

Attorney

Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

(608) 267 - 7380

tamara.dodge@legis.wisconsin.gov

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Subject: FW: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Hopefully, this is the last piece.....

From: Lawless, Thomas M - DHS
Sent: Wednesday, January 28, 2009 4:57 PM
To: Jablonsky, Sue - DOA; Nepple, Fred - OCI
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

To reinforce the joint agency oversight approach, I would suggest that the clause "after consulting with the department" be added to three more paragraphs:

- 648.15(2)
- 648.15(3)
- 648.75(2)

From: Jablonsky, Sue - DOA
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1/28/2009

Wisconsin Legislative Reference Bureau
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From: Jablonsky, Sue - DOA [<mailto:sue.jablonsky@wisconsin.gov>]
Sent: Wednesday, January 28, 2009 8:47 AM
To: Dodge, Tamara
Subject: FW: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

From: Nepple, Fred - OCI
Sent: Wednesday, January 28, 2009 8:40 AM
To: Jablonsky, Sue - DOA; Lawless, Thomas M - DHS
Subject: RE: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Sue

I haven't made a complete review but note three items: Should the appropriation in section 2 include a purpose? Also DHS may wish to review s. 648.27 (1)-it may not be broad enough language for assessment to encompass all the DHS expected cost to be included. E.g. quality monitoring? Finally a minor item it might be desirable to have a broader title to s. 648.27 (1).

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From: Jablonsky, Sue - DOA
Sent: Wednesday, January 28, 2009 8:34 AM
To: Nepple, Fred - OCI; Lawless, Thomas M - DHS
Subject: FW: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

This draft reflects changes requested by OCI

From: Henry, Patty [<mailto:Patty.Henry@legis.wisconsin.gov>]
Sent: Tuesday, January 27, 2009 5:20 PM
To: Jablonsky, Sue - DOA

1/28/2009

Cc: Gauger, Michelle C - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA

Subject: LRB Draft: 09-1658/P2 Oversight of care management organizations by Office of the Commissioner of Insurance

Following is the PDF version of draft 09-1658/P2.